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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,648	04/16/2004	Arthur E. Colvin JR.	2232-198	8486
6449 7590 03/18/2010 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
EXAMINER DINH, TUAN T				
ART UNIT 2841		PAPER NUMBER		
NOTIFICATION DATE 03/18/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

### Office Action Summary

**Application No.**

10/825,648

**Applicant(s)**

COLVIN ET AL.

**Examiner**

Tuan T. Dinh

**Art Unit**

2841

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 8-11, 13 and 15-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12, 14, 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

New claim 50 recited a limitation of "the brick epoxy comprised of a polymerized formulation of monomers and polymers", which is not disclosed in Specie I. Therefore, claim 50 is withdrawn from further consideration as being drawn to non-elected subject matter.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6-7, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoakum (U.S. Patent 5,963,132) in view of Stafford et al. (U.S. Patent 5,482,008).

As to claim 1, Yoakum discloses an encapsulated implantable transponder (10), comprising: a circuit (12) (a circuit board 18 having components 16, 20, etc.) encased within a brick of epoxy (26) containing the circuit (12) housed in said circuit (18), a second epoxy (34) formed on the surface of the brick of the epoxy (26).

Stafford et al. shows a bolus as shown in figures 1-15 comprising a housing (3) fully cover core (2) containing a circuit board (5).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a teaching of Stafford et al. employed in the apparatus of Yoakum in order to protect the apparatus from external impact.

As to claim 6, Yoakum as modified by Stafford discloses at least part of the circuit (12) is covered with an epoxy (26) including a light blocking pigment.

As to claim 7, Yoakum as modified by Stafford discloses the circuit comprises a substrate (18) and a plurality of components (16, 20, etc.) attached to said substrate, see figure 1.

As to claim 12, Yoakum as modified by Stafford discloses the housing (14) is substantially cylindrical in shape and has an inner diameter.

3. Claims 2-5, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoakum and Stafford as applied to claim 1 above, and further in view of Colvin, Jr. (U.S. Patent 6,304,766).

Yoakum and Stafford disclose all of the limitations except for the housing is not made from glass or made from organic polymer or PMMA.

Colvin teaches an optical-based sensor comprising a housing (12) or in page 6 of a specification (a housing 102, US 6,304,766) to housing a circuit board.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a teaching of Colvin employed the housing of Yoakum and Stafford in order to provide a superior optical properties.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-7, 12, 14 have been considered but are moot in view of the new ground(s) of rejection.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnston et al and Samson et al. disclose related art.
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan T. Dinh whose telephone number is 571-272-1929. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Jinhee can be reached on 571-272-1977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tuan T Dinh/  
Primary Examiner, Art Unit 2841

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